1	IN THE UNITED STATES PATENT AND TRADEMARK OFFICE	
2 3 4	In the Application of Entwistle, et al.) Examiner: John K. Fristoe, Jr.
5 6 7	for VALVE ARRANGEMENT) Group Art Unit: 3753
8 9) Confirmation No.: 7090
10 11	Serial No.: 10/573,873) Our Docket No.: 6495-0155WOUS
12 13	Filed: March 29, 2006	Ś
14	Hartford, Con	necticut, June 9, 2009
15		•
16 17 18 19 20	Mail Stop APPEAL Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	
21	SUBSTITU	ΓΕ APPEAL BRIEF
22	Dear S I R:	
23	Appellants respectfully su	ubmit the following Substitute Appeal
24	Brief in response to the Notice of	of Non-Compliant Appeal Brief issued
25	May 14, 2009 in the above-ident	tified application.
26	In order to obviate any po	ossible confusion, Appellants hereby
27	submit a complete Substitute Brief, even though only select sections	
28	of the original Brief were identified as non-compliant.	
29		-

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1 (I) Real Party in Interest
2 The real party in interest in the present application is Danfoss
3 A/S, as evidenced by the assignment recorded at the United States
4 Patent and Trademark Office March 29, 2006, Reel 017756 / Frame
5 0916.

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1 (II) Related Appeals and Interferences 2 There are no other Appeals, Interferences, or judicial 3 proceedings, known to any inventor, attorney, agent or other person 4 substantively involved in preparation or prosecution of the 5 application, which will directly affect or be directly affected by or 6 have a bearing on the Board's decision on the pending Appeal. 7

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Claims 1-10 are pending. Claims 2-10 depend from claim 1.

Claims 1-5 and 8-10 are rejected under 35 USC § 102(b) as anticipated by Tan (U.S. Patent No. 5,687,759); claims 6 and 7 are rejected under 35 USC § 103(a) as obvious over Tan in view of Kubiak (U.S. Patent No. 4,025,045). The rejections of claims 1-10 are appealed.

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1	(IV) Status of Amendments
2	No amendments have been filed after final rejection.
3	The amendment filed June 12, 2008 has been entered in the
4	application, but was not considered by Examiner, as evidenced by the
5	grounds for rejection stated in the first paragraph on page 3 of the
6	Final Office Action issued September 8, 2008.
7	

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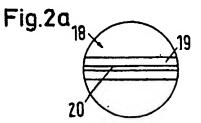
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(V) Summary of Claimed Subject Matter

Referring to the
Specification and Drawings, the
present invention relates to a
suction nozzle arrangement 18
(page 7, line 32) that is provided
in a pilot-controlled valve
arrangement 1 (page 6, line 4), as
shown in Appellants' Figure 1.
The suction nozzle arrangement is
disposed <u>in a flow path</u> between an
inlet connection 3 (page 6, line 5)
and an outlet connection 4 (page

6, line 5). The suction nozzle arrangement 18 is disposed at one end of a channel arrangement 14 (page 7, line 1) formed in the pilot-controlled valve arrangement 1. A pressure chamber 11 (page 6, line 24) is disposed at the other end of the channel arrangement 14. A pilot valve 15 (page 7, line 4) is disposed in the channel arrangement 14. When the pilot valve 15 is first opened, fluid flows from the pressure chamber 11 to the outlet connection 4 through the channel arrangement 14 and the suction nozzle arrangement 18. Removing fluid from the pressure chamber 11 lifts a valve element 6 (page 6, line 9) from a valve seat 7 (page 6, line 9), opening a closing device 5 (page 6, line 8) disposed in the flow path from the inlet connection 3 to the outlet connection 4.

The fluid flowing through the flow path interacts with the suction



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nozzle arrangement 18 to suck fluid from the pressure chamber 11

through the channel arrangement 14. (page 2, line 25 to page 3, line

17 and page 7, lines 32-33). In one embodiment, as shown in

4 Appellants' Figure 2a, the suction nozzle arrangement 18 has a pipe

19 (page 8, line 3) extending across the flow path; the pipe 19 has a

slot 20 (page 8, line 6) directed toward the outlet connection 4,

through which the fluid is sucked.

Locating Appellants' suction nozzle arrangement 18 <u>in</u> the flow path between the inlet connection 3 and the outlet connection 4 is what causes the *suction* of Appellants' suction nozzle arrangement 18. The suction occurs because flow velocity *in* a flow path is higher than flow velocity at the wall of the flow path. Thus, Bernoulli's principle causes static pressure to be lower in the middle of the flow path than at the boundary of the flow path. Thus, locating the suction nozzle arrangement 18 <u>in</u> the flow path advantageously ensures that the pressure in the pressure chamber 11 remains at a reduced value while the closing device 5 is opened. The suction nozzle arrangement 18 thereby prevents heavily varying performance during opening (valve chatter), which is known to be a deficiency of previous pilot-controlled valves. (page 3, lines 8-18 and page 2, lines 15-18).

Advantageously, the suction nozzle arrangement 18 includes a suction nozzle directed toward an outlet connection to block fluid entry into the channel arrangement 14. (page 8, lines 27-31).

Claim 1 recites a valve arrangement 1 with a housing 2 (page 6, line 4), an inlet connection 3 and an outlet connection 4 (page 6, lines 4-5), which are connected with each other via a flow path (page 6, line 8), in which is located a closing device 5, which has a valve seat 7 and a valve element 6 interacting with the valve seat (page 6, lines 8-10),

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resetting device 8 (page 6, lines 12-16) and being acted upon on the side facing the valve seat by a pressure in a first pressure chamber 9 (page 6, lines 18-21), said pressure corresponding to the pressure in the inlet connection 3, when the closing device is closed, and on the side 12 facing away from the valve seat by the pressure in a second pressure chamber 11 (page 6, lines 23-26), which is connected with the outlet connection via a channel arrangement 14 (page 7, lines 1-3), in which is located at least one auxiliary valve 15 (page 7, lines 3-9), and with the first pressure chamber via a throttle 13 (page 6, lines 28-31), wherein the channel arrangement ends in a suction nozzle arrangement 18 (page 7, lines 32-33).

Claim 6 depends from claim 1, and further recites the suction nozzle arrangement 18 has a pipe 19, which has a slot 20 in the direction of the outlet connection 4. (page 8, lines 1-20).

Claim 9 depends from claim 1, and further recites the suction nozzle arrangement 18 has an annular nozzle 21 (page 8, line 23), whose opening is directed towards the outlet connection 4.

	,
1	(VI) Grounds of Rejection to be Reviewed on Appeal
2	1. Whether claims 1-5 and 8-10 are anticipated by Tan (U.S
3	Patent No. 5,687,759) under 35 USC § 102(b).
4	
5	2. Whether claims 6 and 7 are obvious over Tan in view of
6	Kubiak (U.S. Patent No. 4,025,045) under 35 USC § 103(a).
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(VII) Argument

REJECTIONS UNDER 35 USC § 102

An anticipation rejection is improper unless *every* element of the claimed invention is *identically* shown in a *single* reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q. 1566, 1567 (Fed. Cir. 1990).

Claims 1-5 and 8-10 are not anticipated by Tan

Claim 1 recites a valve arrangement with a suction nozzle arrangement located in a flow path. Claim 1 also recites that a closing device is located in the flow path, and that the closing device includes a valve seat and a valve element, the valve element being loaded in the direction of the valve seat by a resetting device and being acted upon on the side facing the valve seat by a pressure in a first pressure chamber, said pressure corresponding to the pressure in the inlet connection, when the closing device is closed, and on the side facing away from the valve seat by the pressure in a second pressure chamber, which is connected with the outlet connection via a channel arrangement. More simply, claim 1 identifies the flow path as the main flow path through the valve arrangement.

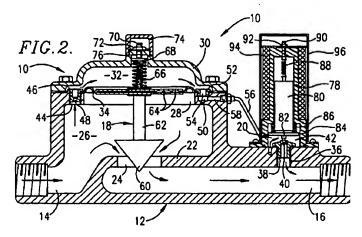
Tan does not anticipate claim 1 at least because Tan fails to show or disclose a suction nozzle arrangement, as recited by claim 1. Tan also fails to show or disclose a suction nozzle arrangement, which is located in a flow path, as further recited by claim 1.

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At most, Tan discloses (at column 3, lines 41-48) a fast-response servovalve 10 having a primary fluid passage, a primary valve 18 for metering flow through the primary fluid passage, and a pilot valve 20 for controlling operation of the primary valve 18, as shown in Tan's Figure 2:



Tan's pilot valve 20 does not show or disclose a suction valve arrangement. At most, the pilot valve 20 includes a restricted orifice 40. The restricted orifice 40 is located entirely <u>outside</u> Tan's primary fluid passage. Consequently, the restricted orifice 40 opens on a region of <u>maximum</u> static pressure according to Bernoulli's principle. (See Appellants' Response submitted December 4, 2008, pages 6-8). Thus, Tan's restricted orifice 40 does not provide <u>suction</u> on Tan's control chamber 32, via Tan's fluid passage 58, while Tan's primary valve 18 is fully opened.

Since Tan's restricted orifice 40 does not provide suction, Tan's restricted orifice is not a suction nozzle arrangement, as recited by claim 1. Moreover, *neither* Tan's pilot valve 20 *nor* Tan's restricted orifice 40 is <u>in</u> a flow path such as the flow path recited by claim 1. For at least these reasons, Tan fails to anticipate claim 1.

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Since Tan does not anticipate claim 1, the rejections of claim 1 and of dependent claims 2-5 and 8-10 are improper under 35 USC § 102. Accordingly, Appellants respectfully request that the improper rejections be reversed.

Claim 2 is not anticipated by Tan

Tan fails to show or disclose at least one suction nozzle, which is directed towards the outlet connection, as recited by claim 2. Tan also fails to show or disclose at least one suction nozzle, which has a bordering wall, whose outside is exposed to the fluid flowing in the flow path, as further recited by claim 2.

As discussed with reference to claim 1, Tan shows nothing more than a pilot valve 20 including a restricted orifice 40 that is housed in a threaded opening 36.

Appellants respectfully submit that Tan's orifice 40 is not directed "towards the outlet (*to the right of* element 16)", as Examiner asserted in the Advisory Action issued December 30, 2008. (emphasis added). Rather, as can clearly be seen in Tan's Figure 2, Tan's orifice 40 is directed toward a longitudinal axis of Tan's element 16. Thus, even if Tan's orifice 40 was mistakenly considered to be a suction nozzle, Tan *still* would not show or disclose a suction nozzle directed toward an outlet connection, as recited by claim 2.

Additionally, Tan's threaded opening 36 is *not* a bordering wall, whose <u>outside</u> is exposed to the fluid flowing in a flow path, as recited by claim 2. If anything, the *inner surface* of Tan's threaded opening 36 is exposed to a fluid. However, Appellants respectfully submit that the fluid within Tan's threaded opening 36 is not flowing in a flow path such as the flow path recited by claim 2. Even if one overlooked

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1	the blatant difference between an <u>outside</u> and an <u>inner</u> surface, Tan
2	still would not show or disclose a bordering wall, whose outside is
3	exposed to the fluid flowing in a flow path, as recited by claim 2.
4	Thus, Tan fails to identically show or disclose each and every element
5	recited by claim 2.
6	Since Tan does not anticipate claim 2, the rejection of claim 2 is
7	improper under 35 USC § 102. Accordingly, Appellants respectfully
8	request that the improper rejection be reversed.
9	Claim 3 is not anticipated by Tan
10	Tan fails to show or disclose a suction nozzle arrangement
11	blocks a fluid entry into the channel, as recited by claim 3.
12	Even if Examiner is correct in comparing Tan's conduit 56 to the
13	channel recited by claims 1 and 3, Tan's pilot valve 20 is not a suction
14	nozzle arrangement. Tan's restricted orifice 40 also is not a suction
15	nozzle arrangement. Moreover, nothing about Tan's pilot valve 20 or
16	restricted orifice 40 blocks a fluid entry into Tan's conduit 56. Thus,
1 <i>7</i>	Tan fails to identically show or disclose each and every element
18	recited by claim 3.
19	Since Tan does not anticipate claim 3, the rejection of claim 3 is
20	improper under 35 USC § 102. Accordingly, Appellants respectfully
21	request that the improper rejection be reversed.
22	Claim 8 cannot properly be rejected as anticipated by Tan
23	35 USC § 132(a) requires that
24 25	[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement

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made, the Director shall notify the applicant thereof,

stating the reasons for such rejection, or objection or

requirement, together with such information and

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references as may be useful in judging of the propriety of continuing the prosecution of his application[.]

(emphasis added).

Examiner rejected claim 8 as anticipated by Tan. However, claim 8 depends from claim 6. Examiner rejected claim 6 as obvious over Tan in view of Kubiak. Thus, Examiner conceded that Tan did not anticipate claim 6, or dependent claim 8.

Moreover, Examiner provided no grounds for rejecting claim 8 as anticipated by Tan. Thus, the rejection of claim 8 fails to comply with the requirements set forth by 35 USC § 132. Since Examiner has no authority to reject a claim without stating grounds for the rejection, the rejection of claim 8 is improper and must be reversed.

Claim 9 is not anticipated by Tan

Tan fails to show or disclose a suction nozzle arrangement that has an annular nozzle, whose opening is directed towards the outlet connection, as recited by claim 9.

Even if Tan's restricted orifice 40 was mistakenly considered to be a suction nozzle, the restricted orifice 40 is <u>not</u> directed toward an outlet connection. If anything, Tan shows the restricted orifice 40 being directed toward a longitudinal axis of Tan's outlet 16, rather than toward Tan's outlet connection "to the right of element 16" as asserted by Examiner in the Advisory Action issued December 30, 2008.

Thus, Tan fails to identically show or disclose each and every element recited by claim 9.

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Since Tan does not anticipate claim 9, the rejection of claim 9 is improper under 35 USC § 102. Accordingly, Appellants respectfully request that the improper rejection be reversed.

Claim 10 is not anticipated by Tan

Tan fails to show or disclose a suction nozzle arrangement, which is located in a section of the flow path with reduced cross-section, as recited by claim 10.

As discussed above with reference to claim 1, Tan does not even show or disclose a suction nozzle arrangement located *in a flow path* between an inlet connection and an outlet connection. Much less does Tan show or disclose a suction nozzle arrangement located in a section of a flow path with *reduced cross-section*. With reference to Tan's Figure 2, even if Tan's restricted orifice 40 mistakenly was considered to be a suction nozzle arrangement, and was further mischaracterized as being located in a flow path, Tan fails to show or disclose the restricted orifice 40 being located at a reduced cross-section of a flow path. Thus, Tan fails to identically show or disclose each and every element recited by claim 10.

Since Tan does not anticipate claim 10, the rejection of claim 10 is improper under 35 USC § 102. Accordingly, Appellants respectfully request that the improper rejection be reversed.

REJECTIONS UNDER 35 USC § 103

An obviousness rejection is improper unless supported by "some articulated reasoning with some rational underpinning". *KSR v. Teleflex*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007). A *prima facie* case of obviousness under 35 U.S.C. § 103(a) is not established unless the prior art would have taught or suggested the claimed

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- subject matter as a whole to a person of ordinary skill in the art, at the
- time of the claimed invention. In re Bell, 991 F.2d 781, 782, 26 U.S.P.Q.
- 3 1529, 1531 (Fed. Cir. 1993); In re Rinehart, 531 F.2d 1048, 1051, 189
- 4 U.S.P.Q. 143, 146 (CCPA 1976). To establish prima facie obviousness
- of a claimed invention, all the claim limitations must be taught or
- 6 suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580
- 7 (CCPA 1974). "All words in a claim must be considered in judging
- the patentability of that claim against the prior art." *In re Wilson, 424*
- 9 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Claims 6 and 7 are not obvious over Tan in view of Kubiak

Claim 6 depends from claim 1.

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Tan fails to teach or suggest a suction nozzle arrangement, as recited by claim 1. Tan also fails to teach or suggest a suction nozzle arrangement, which is located in a flow path, as further recited by claim 1.

At most, Tan teaches a pilot valve 20, which includes a restricted orifice 40. As discussed above, Tan's restricted orifice 40 is not a suction nozzle arrangement. Further, the restricted orifice 40 is not located in a flow path such as the flow path recited by claim 1.

Tan fails to teach or suggest any reason why one of ordinary skill, at the time of the claimed invention, would have modified Tan's restricted orifice 40 to provide a suction nozzle arrangement. Tan entirely fails to recognize the benefits of a suction nozzle arrangement. Tan also fails to teach or suggest any reason why one of ordinary skill would have moved Tan's restricted orifice 40 into Tan's primary fluid passage, so as to approach the recitations of claim 1. The intended purpose of Tan's servovalve 10 is to provide flow

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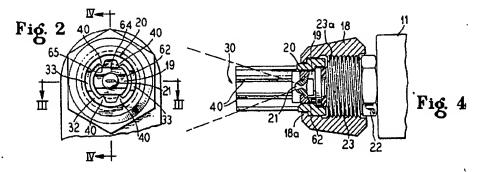
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1 through the primary fluid passage between Tan's inlet 14 and Tan's 2 outlet 16. One of ordinary skill would recognize that moving the 3 restricted orifice 40 into the outlet 16 would undesirably reduce flow through Tan's primary fluid passage (even if only by a small 4 amount). If a proposed modification would render the prior art being 5 6 modified unsatisfactory for its intended purpose, then there is <u>no</u> 7 suggestion or motivation to make the proposed modification. See 8 MPEP § 2143.01, citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 9 (Fed. Cir. 1984). Thus, if anything, Tan <u>teaches away</u> from moving the 10 restricted orifice 40 into the primary fluid passage defined by Tan's outlet 16. 11

Kubiak likewise fails to teach or suggest a suction nozzle arrangement, a suction nozzle arrangement located in a flow path, or any reason why one of ordinary skill would have modified Tan to provide the structures recited by claim 1.

At most, Kubiak discloses a nozzle guard for airless spray pistols, and in particular discloses a non-circular orifice 21, as shown in Kubiak's Figures 2 and 4:



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Kubiak's non-circular orifice 21 fails to teach or suggest a suction nozzle arrangement, as recited by claim 1. In fact, Kubiak discloses providing an "extremely high pressure" of about 900 to

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2,900 psi across Kubiak's orifice 21. (See Kubiak, column 1, lines 31 42). Appellants respectfully submit that in view of such a large

3 pressure differential, one of ordinary skill would see no need to

provide a suction nozzle arrangement. Additionally, one of ordinary

skill would not see any need for modifications to prevent reversal of

flow against Kubiak's extremely high pressure differential.

Appellants further submit that Examiner has not provided a reasoned statement as required to support a *prima facie* case of obviousness. In particular, Examiner has not provided any reasoning to support Examiner's assertion that one of ordinary skill would be motivated to modify Tan's circular orifice 40, according to Kubiak's oval orifice 21, in order to prevent reversal of flow through the modified orifice. (See Final Office Action issued September 8, 2008, page 4).

For at least two reasons, one of ordinary skill would *not* find it "reasonable to modify the orifice of Tan with the teachings of Kubiak" (Final Office Action, page 2) "in order to decrease the possibility of fluid being through the nozzle in the reverse direction" (Final Office Action, page 4).

First, Examiner's argument about the shape of an orifice affecting reversal of flow through the orifice is contrary to common sense. One of ordinary skill would recognize that Kubiak's oval orifice 21 is not any more a check valve than is Tan's circular orifice 40. Neither orifice in any way prevents reversal of flow or blocks a fluid entry into a channel.

Second, the proposed modification would render Tan's orifice 40 unsuitable for its intended purpose of restricting flow, since Tan's control plug 82 could not reasonably be expected to reliably seal a

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non-round orifice. Thus, there would have been no motivation for one of ordinary skill to modify Tan as proposed by Examiner. See *In re Gordon*.

For at least these reasons, the combination of Tan and Kubiak fails to teach or suggest the recitations of claim 1 as a whole.

At least because claims 6-8 depend from claim 1, the combination of Tan and Kubiak also fails to teach or suggest the recitations of claims 6-8.

Additionally, claim 6 recites the suction nozzle arrangement of claim 1 has a pipe, which has a slot in the direction of the outlet connection.

Neither Tan nor Kubiak, nor even the combination thereof, teaches or suggests a pipe, which has a slot. Further, even the combination of Tan and Kubiak fails to teach or suggest a pipe, which has a slot in the direction of an outlet connection. In this regard Examiner argues that Kubiak's <u>nozzle</u> tip 19 is a pipe. (See Final Office Action issued September 8, 2008, page 2). In response to Examiner's argument, Appellants respectfully direct the Board's attention to the following dictionary definitions:

- "noz·zle (nzl) n. 1. A projecting part with an opening, as at the end of a hose, for regulating and directing a flow of fluid." nozzle definition of nozzle by the Free Online Dictionary, Thesaurus and Encyclopedia, http://www.thefreedictionary.com/nozzle (last visited Feb. 26, 2009).
- "pipe (pp) n. 1. a. A hollow cylinder or tube used to conduct a liquid, gas, or finely divided solid." pipe definition of pipe by the Free Online Dictionary, Thesaurus and Encyclopedia,

http://www.thefreedictionary.com/pipe (last visited Feb. 26, 1 2009). 2 Thus, a nozzle is not a pipe. 3 4 For at least this additional reason, the combination of Tan and Kubiak fails to teach or suggest the recitations of claim 6. 5 6 Since the combination of Tan and Kubiak does not render claim 7 6 obvious, the rejections of claims 6 and 7 are improper under 35 USC § 103. Accordingly, Appellants respectfully request that the 8 9 improper rejections be reversed. CONCLUSION 10 11 Having shown the errors and deficiencies of the present 12 rejections, Appellants respectfully submit that no sufficient reason 13 has been shown why the present claims might not be patentable over the cited prior art. Accordingly, Appellants respectfully urge the 14 Board to reverse the present rejections and to direct that all pending 15 16 claims be promptly passed to issue. 17

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1	Attorneys for Appellants authorized the Commissioner to
2	charge the Appeal Brief fee of \$540.00 to our Deposit Account 13-
3	0235, in our Appeal Brief dated April 2, 2009. Appellants believe that
4	no additional fees presently are due in the above-identified
5	application. However, the Commissioner is authorized to charge any
6	additional fees that may be required to Deposit Account No. 13-0235.
7	
8	Respectfully submitted,
9	F-
10	By <u>/Marina F. Cunningham/</u>
11	Marina F. Cunningham
12	Registration No. 38,419
13	Appellants' Representative
14	
15	Customer No.: 35301
16	McCormick, Paulding & Huber LLP
17	CityPlace II, 185 Asylum Street
18	Hartford, CT 06103-3402
19	(860) 549-5290
20	
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(VIII) Claims Appendix

1. A valve arrangement with a housing, an inlet connection and an outlet connection, which are connected with each other via a flow path, in which is located a closing device, which has a valve seat and a valve element interacting with the valve seat, the valve element being loaded in the direction of the valve seat by a resetting device and being acted upon on the side facing the valve seat by a pressure in a first pressure chamber, said pressure corresponding to the pressure in the inlet connection, when the closing device is closed, and on the side facing away from the valve seat by the pressure in a second pressure chamber, which is connected with the outlet connection via a channel arrangement, in which is located at least one auxiliary valve, and with the first pressure chamber via a throttle, wherein the channel arrangement ends in a suction nozzle arrangement, which is located in the flow path.

2. The valve arrangement according to claim 1, wherein the suction nozzle arrangement has at least one suction nozzle, which is directed towards the outlet connection and has a bordering wall, whose outside is exposed to the fluid flowing in the flow path.

3. The valve arrangement according to claim 2, wherein the suction nozzle arrangement blocks a fluid entry into the channel.

4. The valve arrangement according to claim 1, wherein the suction nozzle arrangement is connected with the housing in at least two positions.

Substitute Appeal Brief dated: June 9, 2009 1 5. The valve arrangement according to claim 1, wherein the 2 suction nozzle arrangement has a body, which is located in extension of a pilot valve seat of the auxiliary valve. 3 4 5 6. The valve arrangement according to claim 1, wherein the suction nozzle arrangement has a pipe, which has a slot in the 6 direction of the outlet connection. 7 8 7. The valve arrangement according to claim 6, wherein the 9 10 pipe is connected with the channel on a frontside. 11 8. The valve arrangement according to claim 6, wherein the 12 pipe is located in the area of a diameter of the outlet connection. 13 14 9. The valve arrangement according to claim 1, wherein the 15 suction nozzle arrangement has an annular nozzle, whose opening is 16 directed towards the outlet connection. 17 18 19 10. The valve arrangement according to claim 1, wherein the

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suction nozzle arrangement is located in a section of the flow path

with reduced cross-section.

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(IX) Evidence Appendix 1

None. 2

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(X) Related Proceedings Appendix

2 None.